

VERMONT LABOR RELATIONS BOARD

LOCAL 1201, AFSCME)	
)	
and)	DOCKET NO. 81-44
)	
CITY OF RUTLAND)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

By petition filed September 13, 1981, and an Amendment to the petition filed September 30, 1981, with the Vermont Labor Relations Board, Local 1201, AFSCME ("Union") requested the existing police unit be enlarged to include traffic court personnel, records clerk, administrative assistant, investigators, and juvenile officer. Attached to the petition and amended petition were authorization cards signed by all of the employees in the petitioned-for positions designating Local 1201, AFSCME, as their bargaining representative. On November 4, 1981, the City of Rutland ("City") responded to the petition by asserting none of the positions belonged in the police unit.

A hearing was held before the full Board December 23, 1981, at the Board hearing room in Montpelier. The Union was represented by Attorney Alan Biederman. William Bloomer, City Attorney, represented the City.

At the hearing, the Union withdrew its request to include the Administrative Assistant within the unit. Also, the City withdrew its opposition to the inclusion of the traffic court personnel and the records clerk in the unit if the Board decertified the currently certified clerks and technical employees unit of the Union which has been dormant the past three years. The Board stated it would decertify the clerical

unit and place the traffic court personnel and records clerk in the police unit if the parties personally notified all City employees affected by such decertification by January 8, 1982, that the Board would decertify the clerical unit unless there was objection to such decertification sent to the Board postmarked no later than January 15, 1982. The affected employees having been so notified, and the Board receiving no objection to decertifying the clerical unit, the Board by separate order dated February 11, 1982, has decertified such unit. Consequently, the traffic court personnel and records clerk are placed in the unit, with the result the parties are in dispute only over the placement of the juvenile officer and the investigators in the police unit.

Memoranda of Law were filed by the City and the Union on January 15, 1982, and January 19, 1982, respectively.

FINDINGS OF FACT

Investigators

1. There are two separate divisions within the Police Department of the City: the Uniformed Division and the non-uniformed Bureau of Criminal Investigation (BCI).

2. The Uniformed Division consists of Patrol Officers (patroimen and corporals), sergeants; and lieutenants. The day-to-day functions of the patrol officers are supervised by shift commanders who are either sergeants or lieutenants. On a given shift, the specific duties and responsibilities are delegated by the shift commander to his patrol officers. Patrol officers report directly to the shift commander and follow his instructions or the instructions of the captain or chief of police. Shift commanders have authority to discipline patrol officers.

3. BCI is composed of a chief investigator and two investigators. The investigators operate independently of the patrol units. The two individuals holding the job of investigator are responsible to the chief investigator who directs the investigators in their day-to-day performance, and is their immediate supervisor. The chief investigator instructs the investigators as to what they are to do on a given day, and has authority to discipline them.

4. Investigators are assigned cases by the chief investigator as they come into BCI from the uniformed division. When an investigator is assigned a case, he may go to the crime scene, and a patrol officer may be assigned to work with him.

5. A patrol officer is assigned to work with an investigator by the patrol officer's shift commander.

6. At the crime scene, the investigator, specially trained to do investigatory work, is responsible for ensuring that physical evidence is not damaged. He gives assigned patrol officers instructions on handling evidence. If the patrol officer does something the investigator thinks may damage the evidence, the investigator may prevent him from damaging the evidence just like he would if a private citizen was damaging the evidence. Investigators and patrol officers generally work cooperatively with each other. An investigator and patrol officer have never gotten into a serious dispute about how to handle evidence.

7. At times, BCI has requested a patrol officer be temporarily assigned to BCI to assist investigators in gathering evidence or getting testimony. Such assignment is contingent upon the approval of the patrol officer's shift commander. If a patrol officer is assigned to BCI temporarily, the chief investigator is his supervisor for the period of assignment.

8. An investigator has no authority to discipline patrol officers. If an investigator has a complaint about a patrol officer's performance (i.e. damaging evidence and not containing crowd at crime scene), he brings it to the attention of the chief investigator, who in turn brings it to the attention of the patrol officer's shift commander. The shift commander determines the imposition of disciplinary action.

9. A patrol officer may be called off the crime scene by his shift commander, an action the investigator can not prevent.

10. At times, the investigators work with the juvenile officers at crime scenes. The investigator and juvenile officer may offer each other advice and input, but neither one of them has the authority to order the other to do anything.

Juvenile Officer

11. The juvenile officer is a non-uniformed officer of the Police Department assigned to investigate criminal matters involving juveniles and generally to prevent and control juvenile delinquency. The juvenile officer operates relatively autonomously and is not part of either the uniformed division or BCI.

12. Generally, the juvenile officer handles juvenile matters alone after a referral is made to him by a uniformed officer, agency, or court. The officer investigates the matter and works in cooperation with other divisions of the Police Department, courts, and agencies to seek disposition of the matter.

13. If the juvenile officer needs the assistance of a patrol officer, he will ask the patrol officers' shift commander to assign a patrol officer to him. Assignment of duties is done by the shift commander. The Juvenile officer has no authority to give orders to a patrol officer and the two work cooperatively.

OPINION

The City contends the two investigators and juvenile officer of the Police Department are supervisors and, thus, ineligible to belong to a bargaining unit pursuant to 21 VSA §1722(12)(B).

Supervisor is defined in 21 VSA §1502(13) as:

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment".

Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980).

It is clear by the evidence before us neither the investigators nor the juvenile officer can hire, transfer, suspend, layoff, recall, promote, discharge, reward, or discipline other employees, or adjust their grievances, or effectively recommend such action. Also, in no instance may an investigator or the juvenile officer assign duties to other employees. Patrol officers may be assigned to work with the investigators or juvenile officer, but such assignment is made by the patrol officer's shift commander, not the investigator or juvenile officer.

The City contends the investigators and juvenile officer responsibly direct other employees. Patrol officers may be assigned to work with investigators on two different types of work: 1) protecting evidence

and containing the crowd at a crime scene; and 2) assisting investigators in gathering evidence or getting testimony. At a crime scene, the investigator is in charge of ensuring that physical evidence is not damaged. In so doing, he may give the officers instructions on handling evidence and prevent them from damaging evidence. However, investigators do not have authority to order patrol officers to follow their commands. In practice, investigators and patrol officers work cooperatively at the crime scene. No evidence before us indicates the situation is any different when patrol officers assist investigators in gathering evidence or getting testimony. Investigators are specially-trained individuals, more skilled in investigatory work than are patrol officers. This fact is appreciated by patrol officers who allow investigators to guide the investigation.

In Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980), our Supreme Court upheld a Board decision [1 VLRB 248 (1978)] that captains of the Brattleboro Fire Department were not supervisory employees.

In that decision, the Board had before it evidence which indicated that at the fire scene itself, captains directed firefighting work in the absence of a superior officer. Evidence further indicated that the captain at the scene could send a man home if he was unfit for duty, and then report the matter to the chief for further action. However, despite this, both the Labor Board and the Supreme Court held the captains not to be supervisory.

In the case before us, the authority of investigators over patrol officers is even less than that exercised by the Brattleboro fire captains. In no event may the investigators direct employees to do work. Further, they have no authority to send an officer home because of misconduct. Only an officer's shift commander may take such action. In sum, when investigators and patrol officers work together, it is as employees under different chains of command who are working cooperatively. Investigators do not direct the work of patrol officers; patrol officers are supervised by their shift commanders.

From the evidence before us, we must also conclude the juvenile officer has no authority to direct employees. When a patrol officer is assigned to work with the juvenile officer, they work cooperatively and the juvenile officer has no authority to give orders to the patrol officer. The patrol officer is supervised by his shift commander.

An investigator and the juvenile officer may also work together at times. In such event, neither directs the other. They may offer each other advice and input, but cannot order each other to do anything.

Thus, we conclude neither the investigators nor the juvenile officer meet the statutory test for supervisory status.


ORDER

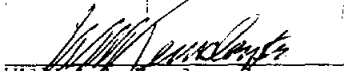
Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED the Petition and Amendment to Petition of Local 1201, AFSCME is granted to the extent that traffic court personnel, the records clerk, investigators, and the juvenile officer of the Rutland Police Department are added to the existing

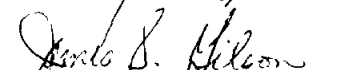
Police Unit; and denied to the extent that the Administrative Assistant of the Police Department is excluded from the Police Unit.

Dated this 11th day of February, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson